

**Rural Cellular Association** 

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## Via ECFS

Ms. Marlene H. Dortch Secretary Federal Communications Commission 445 12<sup>th</sup> Street, SW Washington, DC 20554

Re:

Ex Parte Notice – In the Matter of Application of Cellco Partnership d/b/a Verizon Wireless ("Verizon") and SpectrumCo LLC ("SpectrumCo") For Consent To Assign Licenses; Application of Cellco Partnership d/b/a Verizon Wireless and Cox TMI Wireless, LLC ("Cox") For Consent To Assign Licenses, WT Docket No. 12-4

Dear Ms. Dortch:

On July 18, 2012, I spoke by telephone with Louis Peraertz, Legal Advisor to Commissioner Clyburn with regard to the above-referenced transaction. I discussed with Mr. Peraertz RCA's continuing concerns regarding an unconditioned grant of the pending Verizon-SpectrumCo/Cox transactions (the "Cable Company Transactions"), despite T-Mobile and Verizon's recent application for consent to swap certain advanced wireless services ("AWS") spectrum and to assign AWS licenses from Verizon to T-Mobile (the "Divestiture Transaction"). Our discussions on this topic were consistent with RCA's previous filings and communications in this proceeding, as supplemented below.

RCA reiterated that a Lower 700 MHz band interoperability condition is critical to mitigating the competitive harms associated with the Cable Company Transactions. Verizon has offered to voluntarily divest its 700 MHz A and B Block spectrum, but the Commission must ensure that these divestitures result in *useable*, 4G-ready spectrum that can be deployed by operating entities in the near term. As RCA has stated in the past, given the lack of a 4G ecosystem associated with 700 MHz A Block spectrum, simply divesting this spectrum would not promote broadband deployment among competitive carriers, particularly in rural areas where the 4G divide is the largest. An interoperability condition on any divested 700 MHz licenses is a transaction-specific remedy which would ensure that this spectrum can be put to actual – and not merely theoretical – use.

RCA also stressed the need for an interoperability condition on the AWS spectrum being acquired by Verizon. As RCA has previously demonstrated to the Commission, as a result of the Cable Company Transactions and the swaps that accompany the Divestiture Transaction, Verizon will hold the substantial majority of the AWS B and F Blocks nationwide. The concentration of Verizon's LTE data offerings in the AWS B and F Blocks, along with Verizon's 700 MHz C Block, gives it both the ability and the incentive to create an anticompetitive boutique band class that will preclude other AWS

<sup>&</sup>lt;sup>1</sup> Wireless Telecommunications Bureau Seeks Comment On The Impact On The Verizon Wireless-SpectrumCo and Verizon Wireless-Cox Transactions of the Applications of Verizon Wireless and T-Mobile To Assign AWS-1 Licenses, Public Notice, DA 12-998 (rel. June 26, 2012).

operators from obtaining "technically feasible" roaming under the *Data Roaming Order*. <sup>2</sup> Given the serious problems that currently plague the Lower 700 MHz band, the Commission must take proactive steps to avoid repeating such a predicament in the currently-harmonious AWS band.

In addition, RCA advocated that any grant of the Cable Company Transactions must contain stringent voice and data roaming conditions. The unconditioned grant of nationwide spectrum to Verizon will serve to further cement Verizon's (along with AT&T's) dominance in the market for nationwide roaming. Roaming conditions remain critical to watershed transactions like the Cable Company Transactions because the Commission has recognized that the voice and data roaming rules "do not enable a smaller or regional provider to replace the competitive position of a nationwide facilities-based provider," and "do not serve as a substitute for competition in the provision of these important services." To remedy the spectrum aggregation and roaming harms associated with an unfettered grant of the Cable Company Transactions, the Commission must ensure that smaller and rural carriers have access to critical voice and data roaming services consistent with RCA's proposed roaming condition.

We also discussed the application of the *Data Roaming Order* to WiFi networks, such as the recently-announced CableWiFi network. RCA expressed its agreement with MetroPCS Communications, Inc.'s position that the data roaming rules certainly apply to WiFi roaming. Specifically, the *Data Roaming Order* applies to all providers of "Commercial Mobile Data Service," which is defined as "[a]ny mobile data service that is not interconnected with the public switched network and is: (i) provided for profit; and (ii) available to the public or to such classes of eligible users as to be effectively available to the public." A service like CableWiFi meets all of the above prerequisites. As a result, the Commission should require that the Cable Companies and Verizon provide WiFi roaming on commercially reasonable terms and conditions as a condition to any grant of the Cable Company Transactions.

RCA notes that any WiFi roaming clarification or condition is distinct from, and would not be a substitute for, a transaction-specific condition relating to WiFi offloading or backhaul, which remains one of RCA's concerns with respect to the Cable Company Transactions. As the Commission is well aware, Verizon and the Cable Companies have entered into a series of joint marketing and resale agreements, which raises the serious question of whether the Cable Companies have an incentive to continue to provide other wireless carriers with competitive offerings in the backhaul and special access markets. To remedy this competitive harm, the Commission must adopt conditions to ensure that competitive carriers have reasonable and nondiscriminatory access to last mile connectivity.

<sup>&</sup>lt;sup>2</sup> Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services, Second Report and Order, 26 FCC Rcd 5411, ¶ 43 (2011) ("Data Roaming Order") (finding that "it is reasonable for a provider not to offer a data roaming arrangement where it is not technically feasible").

<sup>3</sup> Application of AT&T Inc. and Qualcomm Incorporated For Consent To Assign Licenses and Authorizations, Order, WT

Docket No. 11-18, FCC 11-188, ¶ 67 (rel. Dec. 22, 2011).

<sup>&</sup>lt;sup>4</sup> *Id.* at ¶ 104.

<sup>&</sup>lt;sup>5</sup> See http://www.cablewifi.com.

<sup>&</sup>lt;sup>6</sup> 47 C.F.R. § 20.3.

<sup>&</sup>lt;sup>7</sup> Bright House Networks, Cablevision, Comcast, Cox Communications and Time Warner are collectively referred to as the "Cable Companies."

<sup>&</sup>lt;sup>8</sup> In conjunction with any such clarification, the Commission should consider an expedited complaint process for any such complaints related to WiFi roaming.

Finally, RCA stated that, although it is pleased that its member T-Mobile has reached a deal for much-needed 4G spectrum, the Divestiture Transaction does not resolve RCA's spectrum aggregation concerns arising out of the Cable Company Transactions. Verizon and AT&T currently hold a substantial lead over smaller carriers in the race to 4G deployment, in part because many small and rural carriers lack access to *useable*, 4G-ready spectrum. To remedy such spectrum aggregation concerns, the Commission must: (i) require further divestitures of AWS spectrum, particularly in major markets in the eastern United States (where Verizon already holds 20 MHz of unused AWS spectrum) and in rural areas (where Verizon has not demonstrated the need for additional spectrum); and (ii) make Verizon's offered divestiture of its 700 MHz A and B Block spectrum an explicit condition to any grant.

Only by (i) requiring Lower 700 MHz and AWS interoperability; (ii) ensuring reasonable access for competitive carriers to voice and data roaming; (iii) issuing a WiFi roaming condition; and (iv) requiring the divestiture of both AWS and 700 MHz spectrum, can the Commission hope to alleviate the competitive harms associated with Verizon's nationwide acquisition of prime, 4G-ready spectrum.

Sincerely,

/s/

Rebecca Murphy Thompson General Counsel

cc: Louis Peraertz (via email only)